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9 August 2019

Cultural Heritage Acts Review  
Department of Aboriginal and Torres Strait Islander Partnerships  
*Sent via email only:* [CHA\\_Review@datsip.qld.gov.au](mailto:CHA_Review@datsip.qld.gov.au)

Dear Madam/ Sir,

**Submission to the review of the *Aboriginal Cultural Heritage Act 2003 (Qld)* and *Torres Strait Islander Cultural Heritage Act 2003 (Qld)* (the Cultural Heritage Acts).**

Thank you for the opportunity to provide a submission on the Cultural Heritage Acts.

#### **About EDO Qld**

EDO Qld is a non-profit community legal centre that provides legal assistance on public interest environmental matters to clients across our jurisdiction in Queensland. Our solicitors provide legal advice to over a thousand individuals and groups every year, in response to specific advice requests from clients and through educational events we organise in partnership with community groups. We run a small number of public interest court cases in state and federal courts to assist those who have good grounds to use their legal rights under our laws to defend the interests of the environment and their community.

**Overall, EDO Qld considers these Acts require substantial review, along with a review of the development frameworks that relate to these Acts, to ensure that the purposes of the Cultural Heritage Acts can be achieved.** At present the Cultural Heritage Acts appear to be failing to achieve their purposes of protecting Aboriginal and Torres Strait Islander cultural heritage. EDO Qld makes a number of recommendations with respect to the Cultural Heritage Acts, which are discussed in more detail in the Appendix. A summary of these recommendations can be found below.

**Summary of key recommendations:**

- 1. Properly identify Aboriginal and Torres Strait Islander parties – do not limit the ability of First Nations people to be involved in the protection of cultural heritage of importance to them**
- 2. Vest ownership of Aboriginal and Torres Strait Islander cultural heritage (except specified matters) in the First Nations People who by their culture and traditional practices are the guardians and keepers of their cultural heritage - including intangible cultural heritage**
- 3. Provide a means by which the Traditional Owners can seek an effective redress from those who intentionally or negligently damage or destroy Aboriginal or Torres Strait Islander cultural heritage**
- 4. Provide Aboriginal and Torres Strait Islander people with a legal means of accessing land upon which their cultural heritage is located**
- 5. Improve mandatory reporting of cultural heritage assessments and consultation for project proposals, with clear criteria as to what is required in undertaking these activities, to assist in assessing compliance**
- 6. Improve the process for compulsory consultation and agreement of a Cultural Heritage Management Plan (CHMP) to ensure Aboriginal and Torres Strait Islander cultural heritage management practices are fully realised**
- 7. Prevent loopholes allowing effective exclusion of First Nations parties from cultural heritage management through amending the Duty of Care Guidelines**
- 8. Clearly define intangible cultural heritage values of an area in the Duty of Care Guidelines to ensure this heritage is also adequately acknowledged and protected**
- 9. Improve compliance and enforcement processes and activities under the Cultural Heritage Acts – laws that are not properly administered and enforced are rendered ineffective and cannot achieve their aims**
- 10. Ensure that CHMPs are required and registered for any activity which may impact on Aboriginal or Torres Strait Islander cultural heritage**

Please do not hesitate to contact us if you have any questions or would like to discuss this matter further.

Yours faithfully  
Environmental Defenders Office (Qld) Inc



**Revel Pointon**  
*Senior Solicitor*

## APPENDIX – Detailed submissions

### **1. Properly identify any relevant Aboriginal and Torres Strait Islander parties – do not limit the ability of First Nations people to be involved in the protection of cultural heritage of importance to them**

The amendments made to the Cultural Heritage Acts via the *Revenue and Other Legislation Amendment Act 2018* (Qld) reinstated the ‘last claim standing’ provision in s 34(1)(b)(i)(C) (after it was overturned by the decision in *Nuga Nuga Aboriginal Corporation v Minister for Aboriginal and Torres Strait Islander Partnerships* [2017] QSC 321). As a result, the position regarding the relevant First Nations party is again that the previously registered native title claimants (which did not successfully claim native title) will be the relevant party ‘if the claim was the last claim registered and there is no other registered native title holder or claimant’. As a result, a native title claimant that was not able to prove native title may nonetheless be the relevant party to negotiate with even if there are Aboriginal or Torres Strait Islander people in the area with particular knowledge about traditions, observances, customs or beliefs associated with the area who have responsibility.<sup>1</sup> A number of submissions made to the *Revenue and Other Legislation Bill 2018* indicated that the ‘last claim standing’ provision should not be reinstated, as it is ‘culturally inappropriate’.<sup>2</sup>

We suggest consideration be given to introducing a notification process where cultural heritage may be impacted, such that any Traditional Owner may notify that they have an interest or concern as to the cultural heritage or site and therefore should be consulted with.

**Recommendation 1:** The ‘last claim standing’ provision should be reconsidered and replaced with full consultation with any Traditional Owners who may be adversely affected by it.

### **2. Vest ownership of Aboriginal and Torres Strait Islander cultural heritage (except specified matters) in the First Nations People who by their culture and traditional practices are the guardians and keepers of their cultural heritage - including intangible cultural heritage**

The Cultural Heritage Acts only vest ownership of Aboriginal and Torres Strait Islander cultural heritage where items fall within limited categories in s 14(3) of each Act, namely Aboriginal or Torres Strait Islander human remains, secret or sacred objects, and Aboriginal and Torres Strait Islander cultural heritage lawfully taken away from an area.<sup>3</sup> In all other circumstances, the State retains residual ownership of Aboriginal and Torres Strait Islander cultural heritage.<sup>4</sup>

The Cultural Heritage Acts do not protect intangible cultural heritage, such as knowledge, stories, song, dance etc.<sup>5</sup> Such ‘intangible heritage’ should be vested in relevant Aboriginal and Torres Strait Islander people who are the guardians or keepers of that cultural heritage.

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<sup>1</sup> Department of Aboriginal and Torres Strait Islander Partnerships, ‘Cultural Heritage Duty of Care Guidelines Review: Submission Analysis Revised’ (28 February 2017), 8.

<sup>2</sup> Submission No 14, Queensland South Native Title Services, *Economics and Governance Committee on the Revenue and Other Legislation Amendment Bill 2018*.

<sup>3</sup> Queensland South Native Title Services Limited, *Aboriginal Cultural Heritage Act 2003* Review Submission (March 2009).

<sup>4</sup> *Aboriginal Cultural Heritage Act 2003* (Qld) s 20(2).

<sup>5</sup> Queensland South Native Title Services Limited, *Aboriginal Cultural Heritage Act 2003* Review Submission (March 2009); Michael J Rowland, Sean Ulm and Jill Reid, ‘Compliance with Indigenous Cultural Heritage Legislation in Queensland: Perceptions, Realities and Prospects’ (2014) 31 *Environment and Planning Law Journal* 329; Department of Aboriginal and Torres Strait Islander Partnerships, ‘Cultural Heritage Duty of Care Guidelines Review: Submission Analysis Revised’ (28 February 2017), 28.

**Recommendation 2:** The ownership of Aboriginal and Torres Strait Islander cultural heritage should be amended to include intangible cultural heritage (further discussed in Recommendation 8).

**3. Provide a means by which the Traditional Owners can seek an effective redress from those who intentionally or negligently damage or destroy Aboriginal or Torres Strait Islander cultural heritage**

The Cultural Heritage Acts empower the State to take reactive action to punish non-compliance with the obligations not to unlawfully harm or possess Aboriginal or Torres Strait Islander cultural heritage and with the cultural heritage duty of care.<sup>6</sup>

While the State does have proactive powers to give a stop order to prevent potentially harmful or adverse activities from being carried out, such orders have only been issued seven times since the introduction of the Cultural Heritage Acts in 2003.<sup>7</sup> Suffice to say it is highly likely that cultural heritage has been illegally damaged in Queensland more than seven times since 2003.

The Land Court has power to grant injunctive relief to prevent cultural heritage from being damaged or destroyed, however we understand injunctive relief has only been granted on one occasion.

First Nations people need to otherwise rely on the State to institute proceedings with respect to breaches of offences in the Cultural Heritage Acts, where it is difficult to succeed as the standard of proof is beyond reasonable doubt.<sup>8</sup>

Section 3(2) ACH Act also operates to prevent the State from being liable to prosecution for an offence relating to cultural heritage, so there is also no effective deterrent against government departments damaging cultural heritage when they carry out activities or projects.<sup>9</sup>

The above provisions demonstrate the inadequacies in the Acts in providing meaningful and effective methods of ensuring the Acts are enforced, and to empower First Nations people to prevent, stop or seek redress for illegal actions. First Nations people should not have to rely on the Department to protect their cultural heritage, particularly where the Department is so frequently under resourced to undertake this work.

**Recommendation 3:** The Cultural Heritage Acts should be amended to provide more effective mechanisms by which First Nations parties can seek to prevent harm from occurring to Aboriginal or Torres Strait Islander cultural heritage, or seek redress from those who have harmed or destroyed Aboriginal or Torres Strait Islander cultural heritage, including the State.

**4. Provide Aboriginal and Torres Strait Islander people with a legal means of accessing land upon which their cultural heritage is located**

The Cultural Heritage Acts omit a statutory right for Traditional Owners to access land for the purpose of ensuring that their cultural heritage is not harmed or damaged by tenure holders.

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<sup>6</sup> *Aboriginal Cultural Heritage Act 2003* (Qld) ss 23, 24, 26.

<sup>7</sup> Mark E. O'Neill, 'A Completely New Approach' to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act' (2018) 9(1) *The International Indigenous Policy Journal* 1, 11.

<sup>8</sup> Queensland South Native Title Services Limited, *Aboriginal Cultural Heritage Act 2003* Review Submission (March 2009).

<sup>9</sup> Queensland South Native Title Services Limited, *Aboriginal Cultural Heritage Act 2003* Review Submission (March 2009).

Section 153 of the Acts presently only provides Traditional Owners with a right to enter land to carry out a cultural heritage activity after consultation with the owner or occupier, or where another Act authorises a person to enter land for carrying out a project and a cultural heritage activity is a necessary or ancillary activity for that project.<sup>10</sup> There is no means by which land can lawfully be accessed without prior consultation. In NSW, there are mechanisms under the *Aboriginal Land Rights Act 1983* (NSW) that provide for the power for Aboriginal people to negotiate access to land for traditional purposes, or otherwise for a Court to issue access permits where negotiation is unsuccessful.<sup>11</sup>

**Recommendation 4:** The provisions relating to access to land should be amended to allow Aboriginal and Torres Strait Islander parties to negotiate agreements with owners or occupiers of land for the purpose of accessing cultural heritage. Further amendments should also be made allowing the Land Court to make orders permitting access where negotiation with owners or occupiers is unsuccessful.

#### **5. Improve mandatory reporting of cultural heritage assessments and consultation for project proposals, with clear criteria as to what is required in undertaking these activities, to assist in assessing compliance**

While the Cultural Heritage Acts impose a cultural heritage duty of care on all land users to ‘take all reasonable and practicable measures to ensure the activity does not harm Aboriginal or Torres Strait Islander cultural heritage’, cultural heritage assessments or even consultation with the Aboriginal or Torres Strait Islander party are to our knowledge rarely a mandatory condition of project approval (for activities in Category 1 to 4).<sup>12</sup> This has allowed projects to proceed, intentionally or not, without any form of cultural heritage assessment, with regulators frequently forced to “guess” if projects are compliant with the Cultural Heritage Acts.<sup>13</sup> The Cultural Heritage Acts provisions do not adequately require mandatory reporting of compliance with the duty of care obligations to enable compliance to be assessed.

Further, there should be a greater link between major project approvals such as environmental authorities and development permits and the Cultural Heritage Acts to ensure that cultural heritage matters are appropriately considered as part of project proposal applications.

**Recommendation 5:** The Cultural Heritage Act should be amended to provide for proactive compliance requirements for land users, particularly relating to compliance with the cultural heritage duty of care. This may include mandatory reporting for land users to the Department to demonstrate compliance.

Integrate Cultural Heritage Acts with development legislation to ensure potential impacts to cultural heritage are assessed upfront.

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<sup>10</sup> Queensland South Native Title Services Limited, *Aboriginal Cultural Heritage Act 2003* Review Submission (March 2009).

<sup>11</sup> Queensland South Native Title Services Limited, *Aboriginal Cultural Heritage Act 2003* Review Submission (March 2009) 11.

<sup>12</sup> Department of Aboriginal and Torres Strait Islander Partnerships, ‘*Aboriginal Cultural Heritage Act 2003* Duty of Care Guidelines’ (16 April 2004).

<sup>13</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1; Michael J Rowland, Sean Ulm and Jill Reid, ‘Compliance with Indigenous Cultural Heritage Legislation in Queensland: Perceptions, Realities and Prospects’ (2014) 31 *Environment and Planning Law Journal* 329, 341.

## **6. Improve the process for compulsory consultation and agreement of a CHMP to ensure Aboriginal and Torres Strait Islander cultural heritage management practices are fully realised**

The ability of Aboriginal and Torres Strait Island parties to fully exercise their rights under the Cultural Heritage Acts is dependent on them having “well-honed skills in negotiation, contract drafting and interpretation, survey implementation, and commercial acumen”.<sup>14</sup> Often, the First Nations party will have access to limited resources, meaning that there is a power disparity between the First Nations party and the relevant sponsor, who may be larger land users that have significant resources at their disposal.<sup>15</sup>

As a result, the First Nations party may have no other choice but to agree to lesser, or non-preferred, cultural heritage management terms and conditions to avoid an unfavourable outcome, or potentially losing control of the cultural heritage process altogether.<sup>16</sup>

Statutory timeframes that allow a land user to seek approval of a CHMP through the Land Court add pressure – First Nations parties often feel that they have not been given the opportunity to develop and implement their preferred cultural heritage management strategies,<sup>17</sup> and often find themselves in a “generally weak bargaining position” that doesn’t always result in full involvement in the cultural heritage management process in a manner that recognises their position as the primary guardians, keepers and knowledge holders of their cultural heritage.<sup>18</sup>

**Recommendation 6:** The Cultural Heritage Act provisions relating to the negotiation of CHMPs should be amended to provide for greater involvement of the Aboriginal and Torres Strait Islander party. This may include mechanisms by which the capabilities and resources of an Aboriginal or Torres Strait Islander party are assessed to determine if additional resources or funding for the purposes of negotiation of a CHMP should be provided, either by the State or the sponsor. Further, access to pro bono or government funded legal assistance would greatly assist the ability of First Nations people to more fairly participate in these processes.

## **7. Prevent loopholes allowing effective exclusion of First Nations parties from cultural heritage management through amending the Duty of Care Guidelines**

The ability of land users to utilise the Duty of Care Guidelines to conduct self-assessments and avoid consultation with Aboriginal parties severely undermines the purpose of the ACH Act, found in sections 4 and 5.<sup>19</sup> Consultation with an Aboriginal or Torres Strait Islander party is only

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<sup>14</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1, 7.

<sup>15</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1, 7; O’Neill, L. M. (2016). *A tale of two agreements: negotiating Aboriginal land access agreements in Australia’s natural gas industry* (Doctoral dissertation) University of Melbourne, Melbourne.

<sup>16</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1, 7.

<sup>17</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1.

<sup>18</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1; C. O’Faircheallaigh, ‘Negotiating cultural heritage? Aboriginal-mining company agreements in Australia’ (2008) 39(1) *Development and Change* 4 doi: <https://doi.org/10.1111/j.1467-7660.2008.00467.x>.

<sup>19</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1; F. Lenzerini, ‘Cultural identity, human rights, and repatriation of cultural heritage of Indigenous Peoples’ (2016) 23(1) *The Brown Journal of World Affairs*.

required for Category 5 activities, namely activities causing additional surface disturbance.<sup>20</sup> Activities that fall under Categories 1 to 4 generally do not require consultation with an Aboriginal party unless the activity requires the excavation, relocation, removal or harm of cultural heritage.<sup>21</sup> As a result, the Duty of Care Guidelines operate to exclude First Nations people from having a role in projects that may impact on their cultural heritage, both tangible and intangible.

Further, by completing a Due Diligence Assessment using the Duty of Care Guidelines, a land user can assert the project area has been subject to extensive ground disturbance making it “reasonable and practicable that the activity proceeds without further cultural heritage assessment”.<sup>22</sup> It is not required that the Due Diligence Assessment be approved by any government agency nor is it compulsory to advise the relevant Aboriginal party of the assessment.

Activities may proceed without further cultural heritage assessment where there has already been ground disturbance (Category 2 to 4). However, such ground disturbance may not have resulted in all cultural heritage being removed or destroyed, meaning that such activities may proceed without further cultural heritage assessment even while the site may still contain significant Aboriginal objects or areas. Even if any remaining significant Aboriginal or Torres Strait Islander objects or areas are damaged or destroyed by ground disturbance, this may not detract from the cultural importance of these objects or areas to many First Nations parties.

By focusing on ground disturbance, the Duty of Care Guidelines do not recognise the potential spiritual or cultural significance of an area for First Nations people, thus ignoring intangible cultural values which are also significant to Aboriginal people, and have been so recognised under the UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage* (discussed further under Recommendation 8).

**Recommendation 7:** The Cultural Heritage Acts and the Duty of Care Guidelines should be amended to provide for greater engagement with Aboriginal and Torres Strait Islander parties even where there has been ground disturbance or development, as these areas may still have significant cultural value with respect to both tangible and intangible cultural heritage.

## **8. Clearly define intangible cultural heritage values of an area in the Duty of Care Guidelines to ensure this heritage is also adequately acknowledged and protected**

Better recognition is needed in the significance of broader cultural landscapes when assessing the impacts on cultural heritage arising from land use activities.<sup>23</sup> The Cultural Heritage Acts are currently only limited to tangible heritage, such as objects, areas and areas without markings, and do not provide a definition to guide the protection of ‘intangible heritage’, which includes stories, festivals and traditional crafts, nor do the Cultural Heritage Acts include them in the assessment and management processes. The definition of ‘intangible heritage’ found in the UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage* includes oral traditions, performing arts, rituals, festivals and traditional crafts, and should be adopted by the Cultural Heritage Acts to better recognise the significance of these aspects of cultural heritage.<sup>24</sup>

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<sup>20</sup> Michael J Rowland, Sean Ulm and Jill Reid, ‘Compliance with Indigenous Cultural Heritage Legislation in Queensland: Perceptions, Realities and Prospects’ (2014) 31 *Environment and Planning Law Journal* 329.

<sup>21</sup> Department of Aboriginal and Torres Strait Islander Partnerships, ‘*Aboriginal Cultural Heritage Act 2003* Duty of Care Guidelines’ (16 April 2004).

<sup>22</sup> Department of Aboriginal and Torres Strait Islander Partnerships, ‘*Aboriginal Cultural Heritage Act 2003* Duty of Care Guidelines’ (16 April 2004) ss 4.2, 4.5, 5.2, 5.5.

<sup>23</sup> Department of Aboriginal and Torres Strait Islander Partnerships, Review of the Cultural Heritage Acts – Consultation Paper, 7 <https://www.datsip.qld.gov.au/resources/datsima/programs/consultation-paper-review-cultural-heritage-acts.pdf>.

<sup>24</sup> UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage* art 2.

**Recommendation 8:** The Cultural Heritage Acts should be amended to include a definition of ‘intangible heritage’, reflecting the definition found in the *Convention for the Safeguarding of the Intangible Cultural Heritage*. This concept should be incorporated into the key provisions of the Cultural Heritage Acts to ensure that such ‘intangible heritage’ is protected from harm, in accordance with the principles underlying the main purpose of the Cultural Heritage Acts.

**9. Improve compliance and enforcement processes and activities under the Cultural Heritage Acts – laws that are not properly administered and enforced are rendered ineffective and cannot achieve their aims**

Some commentators argue that cultural heritage has fared poorly under the Cultural Heritage Acts because of the procedural expediency of these frameworks.<sup>25</sup> There is also a lack of monitoring by the Department to determine if developers are upholding their cultural heritage duty of care.<sup>26</sup> As a result, compliance is often left unsupervised in favour of processing projects, such that cultural heritage may be damaged or destroyed. This is exacerbated by a lack of departmental resources (staff, funds, equipment), and as such is a substantial barrier to achieving compliance.<sup>27</sup> It is further impeded by the disconnect between the Cultural Heritage Acts and the other development frameworks.

**Recommendation 9:** The Department should more actively monitor compliance with the cultural heritage duty of care by land users, to ensure that all reasonable and practicable measures are being undertaken to ensure Aboriginal cultural heritage is not harmed by the activity. More resources should be allocated to the Department to ensure that such compliance can be effectively monitored. Ideally cultural heritage matters should be linked to the major approval assessment processes to ensure they are adequately assessed prior to the project being undertaken.

**10. Ensure that CHMPs are required and registered for any activity which may impact on Aboriginal or Torres Strait Islander cultural heritage**

A mandatory CHMP is only required for certain high-level impact activities that require an environmental impact assessment. Otherwise, land users are only obligated under the cultural heritage duty of care to assess the risk of harm to cultural heritage arising from the activity through a self-assessment process.

In 2011-2012, the Department processed 1,088 environmental authority applications under the *Environmental Protection Act 1994* (Qld) and 2,090 development applications under the *Sustainable Planning Act 2009* (Qld). However, in 2011-2012 only 40 new CHMPs were registered with the Department. Whilst it is difficult to measure the extent of compliance with the Cultural Heritage Acts,<sup>28</sup> it was recognised in the State of the Environment Report for 2011 that the number of CHMPs per year (20-30) does appear small given the number of major projects that are likely to be undertaken each year in Queensland.<sup>29</sup> As a comparison, since the *Aboriginal Heritage Act 2006* (Vic) came into operation in 2007, over 800 CHMPs have been prepared (noting that Victoria is about 1/3 the size of Queensland). Triggers for CHMPs are different under the

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<sup>25</sup> Mark E. O’Neill, ‘A Completely New Approach’ to Indigenous Cultural Heritage: Evaluating the Queensland Aboriginal Cultural Heritage Act’ (2018) 9(1) *The International Indigenous Policy Journal* 1; Michael J Rowland, Sean Ulm and Jill Reid, ‘Compliance with Indigenous Cultural Heritage Legislation in Queensland: Perceptions, Realities and Prospects’ (2014) 31 *Environment and Planning Law Journal* 329.

<sup>26</sup> Michael J Rowland, Sean Ulm and Jill Reid, ‘Compliance with Indigenous Cultural Heritage Legislation in Queensland: Perceptions, Realities and Prospects’ (2014) 31 *Environment and Planning Law Journal* 329.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.



*Aboriginal Heritage Act 2006* (Vic), and similar provisions may provide a stronger legislative model for cultural heritage compliance in Queensland.<sup>30</sup>

**Recommendation 10:** The mandatory CHMP process should be amended to require a greater number of activities to conduct a cultural heritage assessment and consult with the Aboriginal or Torres Strait Islander party, as in Victoria. This may require amending the Cultural Heritage Acts and the Duty of Care Guidelines and lowering the threshold for when a CHMP is mandatory. Further, as suggested above, this would also be better achieved if linked to the major project assessment processes.

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<sup>30</sup> Ibid.